

## REMARKS

Rejected claims 85, 88, 89, 97, 98, 100, 105, 106, 114 and 115 have been cancelled without prejudice.

Claims 84, 93, 94, 96, 99, 103, 104, 110, 111, 113 and 116-119 have been rejected under 35 U.S.C. § 102(a) as being anticipated by Knight et al '479. This rejection is respectfully traversed with respect to these claims as amended herein.

Specifically, these claims now variously recite “a transparent distal tip having substantially conical tapered outer walls converging to a blunt end for dissecting tissue, the tip being disposed on a distal end of the unit to dissect tissue and facilitate passage of the tubular body through tissue under endoscopic visualization; and a non-inflatable dilating element disposed proximally of the distal tip and having a substantially olive-shaped exterior contour that gradually increases in size in the proximal direction from a distal edge thereof to a maximum cross-sectional dimension greater than the cross-sectional dimension of the distal end of the tubular body, the dilating element then decreasing in size to a proximal edge for facilitating atraumatic expansion of tissue following dissection by the tapered distal tip”.

In addition, the dependent claims are further variously limited by such recitations as “the exterior contour of the dilating element includes peripheral faceted surfaces located near the point of maximum cross-sectional dimension”, or

“the peripheral faceted surfaces include axially-aligned ridges”, or “the exterior contour of the dilating element includes axially-aligned ribs and flutes”, or “the dilating element is compressible”.

These aspects of the claimed invention are not disclosed or even suggested by Knight et al ‘479 which relies upon a single inverted spoon-shaped element to both dissect and dilate tissue (and perhaps also to serve as a scalpel shield).

However, there is no disclosure here of a substantially conical dissecting tip and an element that is located proximally of the dissecting tip and that has a substantially ovoidal or olive shape, in any manner resembling Applicants’ claimed invention, for dilating tissue following dissection thereof by the dissecting tip. At best, the device disclosed in Knight et al ‘479 has severely limited range of axial-angular orientations, for example, not useful upside-down or beneath a vein in right-side up orientation as shown due to the inverted spoon shape and associated upstanding handle 14, 24 that thus limit utility of the device essentially to a single operating plane or orientation. It is therefore respectfully submitted that claims 84, 93, 94, 96, 99, 103, 104, 110, 111, 113 and 116-119 are not anticipated by, but instead are patentably distinguishable over the deficient disclosure of Knight et al ‘479.

Claims 90-92, 95, 107-109 and 112 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Knight et al ‘479 in view of Yoon ‘286. This rejection is respectfully traversed with respect to these claims as amended herein.

These dependent claims as amended herein incorporate “a transparent distal tip having substantially conical tapered outer walls converging to a blunt end for dissecting tissue, the tip being disposed on a distal end of the unit to dissect tissue and facilitate passage of the tubular body through tissue under endoscopic visualization; and a non-inflatable dilating element disposed proximally of the distal tip and having a substantially olive-shaped exterior contour that gradually increases in size in the proximal direction from a distal edge thereof to a maximum cross-sectional dimension greater than the cross-sectional dimension of the distal end of the tubular body, the dilating element then decreasing in size to a proximal edge for facilitating atraumatic expansion of tissue following dissection by the tapered distal tip”. These claims are further variously limited by such recitations as “the exterior contour of the dilating element includes peripheral faceted surfaces located near the point of maximum cross-sectional dimension”, or “the peripheral faceted surfaces include axially-aligned ridges”, or “the exterior contour of the dilating element includes axially-aligned ribs and flutes”, or “the dilating element is compressible”.

These aspects of the claimed invention are not disclosed or even suggested by the cited references considered either alone or in the combination proposed by the Examiner.

The deficient disclosure of Knight et al '479 is noted in the above Remarks, and Yoon '286 discloses a sharp, tissue-penetrating trocar with a safety shield. Contrary to the Examiner's characterization of an "analogous medical apparatus", Applicants respectfully submit that Yoon's sharp tissue-penetrating trocar is not analogous to Knight's tissue-dissecting vessel harvester. Indeed, the trocar of Yoon '286 would have no utility in vessel-harvesting surgery, and the dissector of Knight et al '479 would have no utility in penetrating tissue (as distinguishable from dissecting or parting tissue along tissue planes).

Nor is there any incentive or instruction found in the cited art for so combining a tissue-penetrating trocar with a tissue-dissecting vein harvester in support of the Examiner's analyses of the diverse features of these separate, non-analogous cited references. It is therefore respectfully submitted that these references may not be combined, as the Examiner has applied them, without impermissibly altering their purposes or functions. Even assuming *arguendo* that the cited references may possibly be combined in permissible manner, they nevertheless fail to establish a *prima facie* basis from which a proper determination of obviousness can be formed. Dependent claims 90-92, 95, 107-109, 112 and new dependent claims 120, 121 are now submitted to define the invention with sufficient particularity and distinctiveness over the cited art to be patentable to Applicants.

Reconsideration and favorable action are solicited.

Respectfully submitted,  
Michael C. Stewart, et al.

Dated: 5/4/07

By: /Albert C. Smith/  
Albert C. Smith, Reg. No.: 20,355  
Fenwick & West LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Tel.: (650) 335-7296  
Fax: (650) 938-5200